IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

TUESDAY, THE 9TH JANUARY 2007 / 19TH PAUSHA 1928

OP.No. 2678 of 1999(R)

PETITIONER:

SOMASUNDARAM KARTHA, HC E-4348.
ALUVA POLICE STATION,
ERNAKULAM DISTRICT.

BY ADV. SRI.S.P.ARAVINDAKSHAN PILLAY
SRI.V.VARGHESE

RESPONDENTS:
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1. **STATE OF KERALA, REP.BY ITS**
CHIEF SECRETARY, SECRETARIATE.
THIRUVANANTHAPURAM.

2. **DIRECTOR GENERAL OF POLICE,**
POLICE HEADQUARTERS,
THIRUVANANTHAPURAM.

3. **INSPECTOR GENERAL OF POLICE,**
SOUTH ZONE,
THIRUVANANTHAPURAM.

4. **DEPUTY INSPECTOR GENERAL OF POLICE,**
ERNAKULAM RANGE, ERNAKULAM.

5. **SUPERINTENDENT OF POLICE,**
ERNAKULAM RURAL, ALUVA.

BY GOVERNMENT PLEADER SRI.SURARSHAN

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 09/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON CMP. NO.4529/1999 IN OP. NO./2678/1999

DISMISSED

9.1.2007 **SD/- S.SIRI JAGAN, JUDGE**

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE MEMO OF CHAGES NO.2/A/PR/93 CIG DT.10.6.93 OF THE C.I.OF POLICE ISSUED TO THE PETITIONER.

EXT.P2:- COPY OF THE EXPLANATION TO EXT.P1 SUBMITTED BY THE PETITIONER, DT.30.7.93.

EXT.P3:- COPY OF THE WRITTEN STATEMENT OF DEFENCE DT.4.3.94 SUBMITTED BY THE PETITIONER.

E.XT.P4:- COPY OF THE ORDER NO.H1/19/B/PR/93/ER (DO NO.434/94/ER) DT.15.12.94 OF THE 5TH RESPONDENT.

E.XT.P5:- COPY OF THE PUNISHMENT ROLL MINUTES APPENDED TO EXT.P4.

EXT.P5:- COPY OF THE APPEAL SUBMITTED BY THE PETITIONER BEFORE THE 4TH RESPONDENT.

EXT.P6:- COPY OF THE ORDER NO.A2/45/APPEAL/95/CR DT.1.11.95 OF THE 4TH RESPONDENT.

EXT.P7:- COPY OF THE ORDER NO.A2/14607/96 CZ 93) DT.22.11.96 OF THE INSPECTOR GENERAL OF POLICE, CENTRAL ZONE, ERNAKULAM.

.EXT.P8:- COPY OF THE PETITION SUBMITTED BY THE PETITIONER BEFORE THE 2ND RESPONDENT DT.18.12.96.

EXT.P9:- COPY OF THE G.O.(Rt) NO.3424/98/HOME DT.31.7.98.

EXT.P10:- COPY OF THE PETITION DT.3.12.98 SUBMITTED BY THE PETITIONER BEFORE GOVERNMENT.

/TRUE COPY/

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S. SIRI JAGAN, J.

O.P. No. 2678 OF 1999 R

Dated this the 9th day of January, 2007

J U D G M E N T

The petitioner, while working as a police constable attached to the Perumbavur police station, was proceeded against for disciplinary action on the ground that the accused in crime No.212/93, under sections 457, 380 and 461 of the Indian Penal Code, of Perumbavur police station, escaped from police custody while the petitioner was on turn duty due to his carelessness and negligence. An oral enquiry was conducted into the allegations of the misconduct, which resulted in Ext.P4(a) punishment roll in which the petitioner was found guilty of the charges levelled against him for which the punishment of barring of two increments with cumulative effect was imposed on the petitioner. Petitioner's appeal, review, etc having become unsuccessful, he is challenging Exts.P4, P6, P7 and P9 orders, which are the original order, appellate order and order in review in the disciplinary proceedings, respectively.

2. The contention raised by the petitioner is that on the fateful day, one Kareem was on sentry duty and the petitioner along with one George was on turn duty. The petitioner contends that the duty of the policeman on turn duty is only to take over from the person on sentry duty if he is unable to continue on sentry duty. Otherwise he is only to be present in the police station and he is not expected to be actually on duty. The further contention

of the petitioner is that the evidence in the enquiry shows that at the time when the accused in the crime escaped from the police custody Sri.Kareem was actually on sentry duty and the petitioner was taking rest in an ante room, from where the spot where the accused was kept was not visible. That being so, the petitioner could not have been made liable for any carelessness or negligence since he could not have been expected to be on sentry duty at the relevant time. He would further submit that if he were to be made liable, then the other turn duty policeman namely, Sri.George should also have been made liable because the petitioner and Sri.George stand on the same footing as turn duty policemen. However, the said George was made a witness in the enquiry against the petitioner and the petitioner a delinquent which is patently discriminatory and unsustainable. The petitioner also points out that the depositions of the various witnesses recorded in Ext.P4(a) punishment roll itself is to the effect that the petitioner was not at all responsible for the escape of the accused.

3. On the other hand, the learned Government Pleader would stoutly deny all the contentions of the petitioner. He would submit that as turn duty policeman, it was the duty of the petitioner to help the sentry duty policeman and, therefore, he was also responsible for the escape of the accused, who was kept under detention in the police station.

4. I have considered the rival contentions in detail.

5. I am of opinion that even going by Ext.P4(a) punishment roll itself, the petitioner is entitled to succeed. First of all, I find considerable force in the contention of the petitioner that when he as well as the other turn duty

policeman namely, George, were similarly situated, the petitioner alone could not have been proceeded against. Instead the said George has been made a witness in the enquiry against the petitioner. I do not find any logic in this approach made by the respondents. I also find substance in the contentions of the petitioner that since the turn duty policeman is expected to be on duty only when the sentry duty cannot discharge his duties the turn duty policeman cannot be held responsible for what happened when the sentry duty policeman was actually on duty. Ext.P4(a) makes it abundantly clear that at the relevant time, Sri.Kareem was on sentry duty and, therefore, the full responsibility for seeing that accused kept at the police station does not escape was squarely on the said Sri.Kareem. In Ext.P4(a), the evidence of the PW1 namely, Sri.George is summarised. In that, it is stated that the said George had categorically deposed that the accused escaped at the time of the duty time of PCE 6436. PCE 6436 is Sri.Kareem. Again, PW3, who was the Circle Inspector of the police station, also categorically stated that the accused escaped at 9.35 at night and at that time, PCE 6436 Sri.Kareem was on sentry duty. Again, the Sub Inspector of the police station categorically stated that it is as per his direction that the accused was kept outside without putting him in the lockup and it cannot be said that it was because of the negligence of the turn duty policeman that the accused has escaped. On the face of this evidence, I do not think that any reasonable person could have come to the conclusion that the petitioner was responsible for the escape of the accused which is the subject matter of the disciplinary proceedings against the petitioner. It, coupled with the fact that the other turn duty

policeman was let off, would prove beyond any reasonable doubt that the petitioner could not have been proceeded against the incident in question. As such, no punishment could have been imposed on the petitioner and the finding in Ext.P4(a) based on that evidence is clearly perverse and unsustainable. In the above circumstances, I quash Exts.P4, P6, P7 and P9 and hold that the petitioner is not guilty of the misconduct alleged against him. The increment withheld as punishment would be released to the petitioner with all arrears within two months from the date of receipt of a copy of this judgment and his pay and pension also shall be re-fixed and arrears paid accordingly within the above said period.

The original petition is allowed as above.

(S. SIRI JAGAN, JUDGE)

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S. SIRI JAGAN , J.

OP No.2678/99 R

J U D G M E N T

9th January, 2007